REASONS FOR GRANTING THE PETITION

1. THIS COURT SHOULD DECIDE WHETHER IT VIOLATES BASIC DUE PROCESS OF LAW AND OTHER CONSTITUTIONAL RIGHTS FOR A STATE COURT TO DECIDE A PRO SE APPEAL SEEKING LEAVE HAS NO MERIT WITHOUT ACCEPTING THE CASE, ALLOWING BRIEFING ON THE MERITS OR ORAL ARGUMENT AND NOT ADDRESSING ANY FACTS, OR CITING ANY AUTHORITY AND LIMITING APPEALS TO 21 DAYS.

Does the 14th Amendment together with the Supremacy Clause, First, Fifth, Ninth and other Amendments and the common law protect and establish U.S. Constitutional rights, privileges and immunities on appeal for state appellants in state courts? Petitioner believes they do.

Petitioner is not aware of any decision by this Court on this issue. If, by chance, there is one, he requests that the case be remanded for a decision on the merits, presuming that is what is demanded by the Constitution and other authorities.

First, the facts are clear that Petitioner was denied the right to file a reply brief in response to Respondent's brief while seeking leave to appeal to the Michigan Court of Appeals (MCOA). (App E, p 5) Second, it is clear the MCOA did not accept the case, but ruled that the appeal had no merit. (App C, p 3) It is also clear, therefore, that no briefing of the issues raised or oral argument was allowed and its clear the decision did not address any specific issue, fact, law or other authority. It is also clear that the time to present all the issues on the appeal by leave and present contrary authority to the lower court decisions is extremely short - 21 days. MCR 7.205(A); 7.205(D)(4)

It is also clear that the Michigan Supreme Court refused to consider any issue raised on leave to appeal there.

(App A, p 1) (See p 9-11) Thus the only hope that Petitioner has is that the Federal Constitution protects his rights, in some respect, against being ignored and brushed aside by the state courts.[5]

Petitioner believes that the First Amendment, 9th Am., Supremacy Clause and 14th Am. and the common law, at least, protect his rights on appeal in state courts and he would like this Court to so rule. Likewise, it is the practice of this Court is to rule on the merits only after accepting the case and allowing briefing and oral argument. Furthermore, it, in contrast the MCOA, allows reply briefs for those seeking leave to appeal. Rule 15.

Petitioner is also aware that the issue is not directly dealt with in the Consitution. But he agrees with the dissenting opinion of Justice Murphy in *Adamson v Calif.*, 332 US 46, 124 (1947) who spoke of the rights of citizen of the states protected by the Constitution.

> "I agree that the specific guarantees of the Bill of Rights should be carried over intact into the first section of the Fourteenth Amendment. *But I am not prepared to say that the latter is entirely and necessarily limited by the Bill of Rights. Occasions may arise where a proceeding falls so far short of conforming to fundamental standards of procedure as to warrant constitutional condemnation in terms of a lack of due process despite the absence of a specific provision in the Bill of Rights.* (emphasis added)

The 14th Am. on its face protects all the federal consitutional rights of the citizens of the states against state violation. See also *Ducan v Louisiana*, 391 US 145 (1968) and cases cited and especially the concurring opinion of Justice Black. One of those protections is the Privileges and Immunities Clause. Petitioner contends he is "immune"

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[5] Considering that the MCOA said the case does not have any merit, Petitioner would likely have *Rooker-Feldman* problems should he decide to file a civil rights lawsuit in federal court even though he is a defendant in this case.

under rights of the Federal Constitution, Declaration of Independence and common law from having his case denied on the merits by the Michigan Court of Appeals without it first accepting the case, allowing briefs on the merits, reply brief, oral argument, and making a full, fair, just and Constitutional decision on the merits citing both facts and authorities and following precedents.

Secondly, he counts it a privilege to be able to speak for himself in court. In addition, the rights and privileges of the First Am. are central because Petitioner needs to be able to speak freely about all the issues, including judicial bias, on appeal by leave without fear of retaliation. He should not be denied appeal because of critical attacks on or charges of bias against lower court judges, attorneys or other officials. *Freedman v Maryland*, 380 US 51, 58-59 (1965) held that procedural safeguards are required to guard against suppression of protected speech. Where is the safeguard here?

Petitioner also notes and claims in accord with the above quoted opinion of Justice Murphy that the 9th Am. grants rights not specified in the Constitution to himself and others of the People specifically - not to the state or its often biased judges and local officials. It is a matter of Liberty and Justice in a supposedly Free county. In contrast the rights reseved to the states are mininal, v those reserved to the People, by the People themselves. The People and wise Founders never intended that the states run rough shod over them or their rights.

The Supremacy Clause is involved because state courts have a duty therein to uphold the decisions of this Court and the US Constitution. Such issues were presented and it is evident to Petitioner that the Michigan Courts have not done that in this case. Do the state appellate courts accessed by leave to appeal have a duty to accept cases based on federal claims? That issue is not addressed directly by the Constitution either. But it is well known that:

> "State courts, like federal courts, have a constitutional *obligation* to safeguard personal

liberties and to uphold federal law. *Martin v Hunter's Lessee*, 1 Wheat 304, 341-344 (1816)" *Stone, Warden v Powell*, 428 US 465, 493-4, fn 35 (1976) (emphasis added)

There also is an Equal Protection issue. Petitioner was pro se at the MCOA. Did they discriminate because of that fact? A law professor has stated :"It is always a mistake to represent yourself. Judges never treat [self represented] litigants as well as those with attorneys." (Christine Godsil Cooper, professor of law at Loyola Law School in Chicago. See www.hightechcareers.com/docs/agediscr.html.) It is doubtful that any attorney presented case would have such a ruling by the MCOA as is presented here. A *pro se* defendant, as Appellant Kennedy was at the outset of this case and on appeal, has a supreme interest in "zealously advocat[ing] the client's best interests" during judicial proceedings attempting to prove his innocence. *People v Mitchell*, 454 Mich 145, 170-171; 560 NW2d 600 (1997); *People v LeBlanc*, 465 Mich 575, 592; 640 NW2d 246 (2002)

Due Process is certainly at risk when the court house door is slamed shut so easily. Here is appeal summary judgment. A conclusory statement on the merits of a valid appeal, without even a fair, full or just hearing of the matters or even allowing them to be presented.

There is no federal standard for acceptance of cases by leave to appeal required of the states that Petitioner is aware of. But there should be. Apparently, state courts of appeal, like the MCOA and Michigan Supreme Court have 100% discretion, regardless of whether federal or state constitutional or law issues are raised.

Petitioner raised and briefed the following questions regarding the MCOA decision, but the appeal was still not accepted. Specifically, the questions concerning the Court of Appeals were:

COA

1. Whether court of appeals erred determining the appeal had no merit without accepting the case or

providing Due Process of Law or a full and fair hearing of the appeal?

2. Whether the court of appeals erred declaring the leave to appeal a delayed leave when in fact it was timely?

3. Whether appellant's fundamental rights were violated when court of appeals clerk, without any authority or jurisdiction, refused to file his reply brief on leave to appeal?

4. Whether appellant's fundamental rights were affected by the court of appeals refusal to correct its errors on rehearing?

Several other questions were presented invoking Federal and State Constitutional protections.

TRIAL COURT

5. Whether Defendant's fundamental rights under *Brady v Maryland*, 373 US 83 (1963) and FOIA were violated by the Township's deliberate withholding of exculpatory information?

JURISDICTIONAL

6. Whether the conviction of defendant is void for lack of jurisdiction because of invalid enactment of the ordinance?

7. Whether the conviction of defendant is void for lack of jurisdiction due to repeal of the ordinance before trial?

8. Whether the conviction of defendant is void for lack of jurisdiction because of an invalid and unsworn complaint?

1ST, 5TH, 6TH AM., PRO SE,

9. Whether Defendant's punishment for contempt was abuse of contempt power, violation of his fundametal rights of speech, defense, and *pro se* rights?

CONTEMPT

10. Whether Michigan contempt statute is unconstitutional on its face and as applied?

BIASED JUDGES

11. Whether circuit court erred on appeal by not following precedents?

12. Whether the district court was biased and therefore the conviction void?

ORDINANCE UNCONSTITUTIONAL

13. Whether township ordinance is unconstitutional?

The Michigan Supreme Court refused to accept the case contending that "we are not persuaded that the questions presented should be reviewed by this Court." (App A, p 1) Petitioner wonders what it takes to be "persuaded" and, more importantly, what it takes for them to be compelled to accept a case?

Petitioner moved for rehearing presenting 2 questions.

1. Whether the state supreme court has a federal constitutional duty under the Supremacy Clause and 14th Am. and state constitution to correct clearly presented errors of lower courts on appeal by leave brought by pro se appellant?

2. What requirements are imposed on a state appellate court under the state and federal constitution (14th Am., Supremacy) prior to deciding, contrary to clear errors presented, that a pro se appeal has "no merit" where the case was not accepted, briefed on the merits or argued orally, and the decision did not address any fact or cite any authority?

Again that Court refused to accept the appeal. (App B, p 2)

The Michigan Supreme Court rule for case acceptance jurisdiction is very restrictive. MCR 7.301 (2004 ed.) In fact, it may be unconstitutionally restrictive.

Rule 7.301 Jurisdiction and Term.

(A) Jurisdiction. The Supreme Court may:

(1) review a Judicial Tenure Commission order recommending discipline, removal, retirement, or suspension (see MCR 9.223-9.226);

(2) review by appeal a case pending in the Court of Appeals or after decision by the Court of Appeals (see MCR 7.302);

(3) review by appeal a final order of the Attorney Discipline Board (see MCR 9.122);

(4) give an advisory opinion (see Const 1963, art 3, § 8);

(5) respond to a certified question (see MCR 7.305);

(6) exercise superintending control over a lower court or tribunal (see, e.g., MCR 7.304);

(7) exercise other jurisdiction as provided by the constitution or by law.

Note that it does not entertain either State or Federal Constitutional claims or questions. Note that the grounds for appeal do not either.

MCR 7.302

(B) Grounds. The application must show that

(1) the issue involves a substantial question as to the validity of a legislative act;

(2) the issue has significant public interest and the case is one by or against the state or one of its agencies or subdivisions or by or against an officer of the state or one of its agencies or subdivisions in the officer's official capacity;

(3) the issue involves legal principles of major significance to the state's jurisprudence;

(4) in an appeal before decision by the Court of Appeals, delay in final adjudication is likely to cause substantial harm;

(5) in an appeal from a decision of the Court of Appeals, the decision is clearly erroneous and will cause material injustice or the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals; or

> (6) in an appeal from the Attorney Discipline Board, the decision is erroneous and will cause material injustice.

Apparently, federal issues are not import.

Free Speech and Due Process were first negatively affected when the Michigan Court of Appeals clerk refused to accept and file Petitioners's pro se reply brief submitted in response to Respondent's opposition to leave to appeal. (See App E, p 5; question #3)

But Due Process of Law also at its base involves jurisdiction. (See *Ex parte Milligan*, 71 US 2; 18 L Ed 281; 4 Wall 2 (1866). Jurisdiction depends upon the limits of the Constitution, the laws and the facts. *Id.* Jurisdiction must be satisfied in all criminal cases. *Id.* Jurisdiction applies to appeals. Did the MCOA have jurisdiction when it ruled on the merits? Judgments are reversed for jurisdictional defects discerned at any stage of the proceedings. *Michigan Insurance Co. v Whittenmore*, 12 Mich 427 (1864). Petitioner contends that the Michigan Court of Appeals did not have jurisdiction to state its opinion on the merits because it had not accepted the case. Furthermore, the Michigan Supreme Court should have reversed, but didn't even accept the case.

This Court said in *Conley v Gibson*, 355 US 41, 48, 2 L Ed 2d 80, 78 S Ct 99 (1957):

> "The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that *the purpose of pleading is to facilitate a proper decision on the merits.*" (emphasis added)

See also *Foman v Davis*, 371 US 178, 181-182, 9 L Ed 2d 222, 83 S Ct 227 (1962). Does that apply to appeals? Petitioner believes the Court will find that there was no "proper decision on the merits" in this case.

This Court in *Atkins v Parker*, 472 US 115; 105 S Ct 2520; 86 L Ed 2d 81 (1985) determined that a claim had "no merit" (US at 130 and fn 34), but only after accepting the case, having normal briefing and oral argument and then

analyzing the facts and case law. That should have been what happened at the Michigan Court of Appeals in this case, but it didn't.

This Court has also said that in relation to social security determinations:

> Finally, the *decisionmaker's conclusion* as to a recipient's eligibility *must rest solely on the legal rules and evidence adduced at the hearing. Ohio Bell Tel. Co. v PUC*, 301 US 292, 81 L Ed 1093, 57 S Ct 724 (1937); *US v Abilene & S.R.Co.* 265 US 274, 288-289, 68 L Ed 1016, 1022, 1023, 44 S Ct 565 (1924). To demonstrate compliance with *this elementary requirement, the decisionmaker should state the reasons for his determination and indicate the evidence he relied on*, cf. *Wichita R. & Light Co. v PUC*, 260 US 48, 57-59, 67 L Ed 124, 129, 130, 43 S Ct 51 (1922), though his statement need not amount to a full opinion or even formal findings of fact and conclusions of law. And of course, *an impartial decision maker is essential.* Cf. *In re Mutchison*, 349 US 133, 99 L Ed 942, 75 S Ct 623 (1955); *Wong Yang Sung v Mc Grath*, 339 US 33. 45-46. 94 L Ed 616, 625, 626, 70 S Ct 445 (1950)." *Goldberg v Kelly*, 397 US 254, 25 L Ed 2d 287, 301, 90 S Ct 1011, (1970) (emphasis added)

Besides the other violations evident above, Petitioner believes many of the Michigan Court of Appeal judges are biased against pro se litigants, as so many courts are. (Possibly because they do not have the union card the Bar provides and, therefore, they should not win.) To avoid having to decide their cases and be possibly embarassed on further appeal, they simply refuse to accept them.

But bias or not the state has an obligation to uphold the United States Constitution and laws. Supremacy Clause, *Alden v Maine*, 527 US 706 (1999) (dissent.)

All pro se litigants rights of Free Speech are at risk, if this decision stands. One of the most distressing aspects of this apparent violation of fundamental rights is the

implication that pro se litigants are inferior and may *not* challenge any government actions or court decisions. If they do, as here, they are deemed to be without merit by the Michigan Supreme Court and Court of Appeals. But that directly implicates the First Amendment Free Speech rights of pro se litigants and appellants and the Equal Protections of the Law. 14th Am. This Court has never addressed such protections for pro se litigants that Petitioner is aware of. Furthermore the 14th Am. protects rights and priviledges. Petitioner asserts being pro se is both of those.

Furthermore, fundamental state requirements are violated. The decision violates the implied duty of the court of appeals in Article VI sec 6 of the Michigan Constitution. That provision states "Decisions of the supreme court [which should apply to every state court], . . . shall be in writing and *shall contain a concise statement of the facts and reasons for each decision and reasons for each denial of leave to appeal.*")

Compare this case to a labor case where the Michigan Supreme Court held that the case should have been docketed, briefed and orally argued and an appropriate opinion issued addressing the issues raised as required by statute. In *Kalamazoo City Education Association v Kalamazoo Public Schools, et al*, 406 Mich 579 (1979) (an appeal by right) the Court said that the labor relations case could not be dismissed without at least a summary consideration of the matter. It reversed stating the COA erred in summarily denying the timely petition for review. It should have done the same here. When does the same begin to apply to pro se appellants cases?

In summary Petitioner believes that the court of appeals decision in this case - summarily stating the appeal has no merit (App C, p 3) - without accepting the case, having briefing or oral argument violates his basic fundamental rights in court under both the state and federal constitutions. Therefore, he requests that this Court accept this case and decide these important issues.

2. THE COURT SHOULD DECIDE WHETHER THE INTENT OF *BRADY v MARYLAND* IS VIOLATED BY GOVERNMENT OFFICIALS WITHOLDING INFORMATION REGARDING THE ORDINANCE NOT BEING PROPERLY ENACTED AND/OR REPEALED PRIOR TO TRIAL.

Brady v Maryland, 373 US 83 (1963) established the right of defendants to have all exculpatory evidence held by the prosecution available for their defense. Petitioner believes that the intent of *Brady* was violated in this case in the following two ways.

First, Petitioner attempted to secure information from the Township before trial that the ordinance was not properly enacted and, therefore, invalid. When the Township refused, he had to hire attorneys to file a state Freedom of Information Act (FOIA) suit to secure it.[6] But the information about the ordinance not being properly enacted (specifically - not published as required) was not obtained until after the trial.[7]

Only after being ordered by a judge did the Township Clerk submit an affidavit, as required by the FOIA order (App H, p 16), that the Township had no evidence proving the ordinance was ever published as required by state law. (App K, p 24, at 3(a)(c)). On appeal the judge literally ignored these facts and concluded the Township had been sanctioned $1400 and found that sufficient, while ignoring completely the invalid ordinance

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[6] Mr. Veltema, Mr. Kennedy's attorney, stated in written document "Trying to obtain information through the Freedom of Information Act was met with objections and lack of disclosure." (Bf. in Opp. To Plaintiff's Mot. For sanctions, p 3, dated 12-2-02.)

[7] The FOIA case was filed on _____. The trial was on Sept. 12, 2002. The FOIA decision order is dated Nov. 6, 2002. App H, p 16 The affidavit of the clerk. App K.

and unjust conviction thereunder. (See Judges opinion App G, p 11-12)

Secondly, just before trial, Petitioner heard by the grapevine that the Township had repealed the ordinance under which he was charged, Ord. 1. His attorneys attempted in a timely motion to dismiss to discover the relevant evidence sufficient to have the charges thrown out. It was to be heard on the day of trial. However, the judge would not let them call or question Township officials or witnesses or proceed with the motion to dismiss. (An act of judicial bias?) He then proceeded to trial and conviction.

On appeal to Circuit Court Petitioner again raised the issue of the repeal. But Respondent deceptively contended to the Circuit Court the ordinance repeal was not published - when in fact it was published - and therefore was not valid. The Circuit Court accepted the argument *without any supporting factual information* or even an affidavit and ruled in the Township's favor. (See App G, p 11)

The repeal and the invalid ordinance issues were presented to the Michigan Court of Appeals in question 1 and 2. Subsequently, Petitioner discovered information from non-township sources proving that the repeal was published and submitted a copy of the evidence to the Michigan Supreme Court, (at App. 8) who refused to accept the case. (App A, p 1) The issues were presented to them. Question 5 (p 10 above) addressed the *Brady* issue and questions 6 and 7 challenged the trial courts jurisdiction in the case. (Id.)

This Court should decide whether justice was done and if *Brady v Maryland* protections apply in this case in light of these facts and the strong arm deliberate attempts to convict under a void ordinance.

3. THE COURT SHOULD DECIDE WHETHER SUFFICENT JUDICIAL BIAS IS EVIDENT FROM THE RECORD FOR DISQUALIFICATION.

Initially the trial judge was asked to recuse himself because of his well known history of bias. The motion was denied and the issue was appealed to circuit court, which issued an opinion, but denied relief. (See App F, p 9)

Two issues of bias are mentioned here, but there are more. The Township Board, before the trial, repealed the Ordinance. Then they attempted to repeal the repeal of the ordinance. Mr.Kennedy's attorney moved to dismiss based on the repeal and lack of oath by Mr. Munson, the Zoning Enforcement Officer. An oath of office is required by law for all state and local authorities. (MCL 15.151; Mich Consti. Art. XI sec 1)

The District Court Judge, acting in accord with his bias in favor of the Township, would not allow the summoned witnesses to be questioned or the motion to be justly heard or decided on the merits. (See Trans, 9-12-2002, p 10-42) After the trial and conviction, he signed an order denying the motions.[8] (App I, p 19)

Mr. Munson lacked an oath of office and hence lacked of authority. But the judge solved the problem, the circuit court ruled. The judge substituted a different person for Munson on the day of trial, thus the matter was cleared

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[8] Michigan has a Constitutionally questionable practice of having court orders prepared by the attorney for the winning party, which is usually the government as was the case here. Thus, they can be, and usually are, slanted, misleading, biased and often are clearly wrong. The judge did not allow the normal challenges to the order allowed. In fact, the oral arguments were to take place on the day of sentence 10-10-02, but the order had already been signed by the judge on 9-27-02 (App I, p 19) This also proves bias in favor of the Township along with other actions.

up according to the circuit court. (App F, p 7-9, please note footnote 2; App G, p 13) But Petitioner disagrees.[9]

The issue of bias was presented in question 4 to the Michigan Court of Appeals and briefed, but they refused to accept the case. (App C, p 3) The issue of judicial bias was also presented to the Michigan Supreme Court in questions 11, 12 (See above at p 10) and in the brief. No ruling was made on the issue. (App A, p 1)

When a judge has an actual bias toward a litigant (favorable or not), the judge must disqualify himself. *Kolowich v Ferguson*, 264 Mich 668 (1933). See also *People v Wolverine Manufacturing Co.*, 149 Mich 580 (1907); *People v Moran*, 36 Mich App 730 (1971); *Auto Workers Flint Credit Union v Kogler*, 32 Mich App 257 (1971). The standard for disqualification may apply when "the least possible basis for it does exist." *Hirych v State Fair Commission*, 376 Mich 384, 396 (1965)

Federal standards require a reasonable person standard where the judge's impartiality might reasonably be questioned. 28 USC 455. Petitioner contends that standard applies to the state here under the Supremacy Clause and 14th Am.

> "In a trial by jury in a federal court, the judge is not a mere moderator, but is the governor of the trial for the purpose of assuring its proper conduct and of determine questions of law. *Herron v Southern Pacific Co.*, 283 US 91, 95." *Quercia v US*, 289 US 466, 469 (1933)

The goal is a "just conclusion" and in pursuit thereof a judge may not be one-sided. (Id.) Whether he is or not is a question for this Court to answer in this case.

A judge's non-pecuniary interest, as well as a pecuniary interest, may require recusal on due process grounds. See

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[9] This is another example of bias. Plus, the witness substituted by the judge did not swear to the complaint or swear in as a witness and had no personal knowledge of the alleged offense.

Aetna Life Ins. Co. v LaVoie, 475 US 813, 829 (1986) (J. Brennan, concurring). the type of interest that requires recusal cannot be defined with precision. *In re Murchison*, 349 US 133, 136 (1955).

Apparently, Michigan is biased in favor of government. It has a history of accepting improperly enacted ordinances and favoring local government, to the distress of the citizens who expect compliance with state laws. See *Edel v Filer Township*, 49 Mich App 210 (1973) (Twp. failed to keep a book of ordinances as mandated by law, but COA counted it as insignificant and reversed in favor of Twp.) and cases cited.

Bias is very difficult for litigants to overcome, as this case demonstrates. For all these reasons the Court should accept this question for review.

4. THE COURT SHOULD DECIDE WHETHER THE MICHIGAN CONTEMPT STATUTE IS UNCONSTITUTIONAL ON ITS FACE AND/OR AS APPLIED TO PETITIONER WHILE SPEAKING FOR HIMSELF DEFENDING AGAINST CHARGES.

Contenpt in this case comes at the most vital of intersections with Free Speech - in defense of oneself in court - and should therefore be considered and decided by this Court.

Mr. Kennedy challenges the Michigan contempt statute (See MCL 600.1701 et seq. above) and its application to him and its violation of his First Am. and 14thAm. rights.

Initially, Mr. Kennedy was representing himself. Knowing the notorious bias history of the judge, he had moved to have the judge recuse himself and demanded a jury trial. At the hearing in 2001 he was threatened with contempt and a cop was called, but he was not incarerated. In 2002, Kennedy was again arguing for a jury trial and had information that the charge was a misdemeanor, which would require one, but the judge refused to even look at it. He was jailed for 15 days, but only held from Thursday to

Monday, allegedly for contempt, and fined $250, which he had to pay before he could be released.[10] After these dreadful experiences, Mr. Kennedy hired an attorney at substantial cost.

On appeal the issue of contempt was raised and denied, but the court does not describe what the contempt was, if any. (App G, p 12) In fact, the cases cited as precedent favor Petitioner. Mr. Kennedy argued that on appeal to the Michigan Court of Appeals in question #3[11], and that it violated his First Am. Rights, but leave was denied and the Court stated the appeal had no merit. (App C, p 3) The question was addressed to the Michigan Supreme Court, but leave was denied. (App A, p 1; See Question 10 above on p 10.)

Currently, the Township via its attorney is harassing Petitioner, by means of another show cause order why he should not be held in *criminal* contempt for not paying $5,000 to the Township for their attorney fees - a judgment that was made after Petitioner had filed his appeal and jurisdiction in the local court had ended and without any authority.[12] The Township attorney initiated this contempt

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[10] While in jail a writ of habeas corpus was filed in his behalf, but the federal judge was out of town and did not rule for a month. The federal courts refused to decide the merits.

[11] "Whether Defendant Kennedy's rights of free speech, self representation, due process and liberty were violated when he was unjustly held in contempt of court, jailed and fined, for simply speaking for and defending himself against the charges by the biased judge?"

[12] Respondent filed a deceptive motion to show cause why Kennedy's appeal should not be dismissed, after it had manipulated the trial judge, claiming the sentencing was not a final order and that the court proceeding of 12-5-02, which was held long after the appeal was filed on 10-10-02, was the final order. But the appellate judge ruled the final

hearing by only a letter to the judge and did not even make an appearance. Kennedy has again had to appeal.

There is, no doubt, a 1st Am. Right, and other rights, to speak in court in one's own defense of charges brought by the government without being held in jail for contempt.

Michigan courts have an ultra liberal interpretation of the contempt power. *In re Huff*, 352 Mich 402, 415-416 (1958)(citations omitted) stated about the contempt power:

> "Such power , being inherent and a part of the judicial power of constitutional courts, *cannot be limited* or taken away by act of the legislature nor is it dependent on legislative provision for its validity or procedures to effectuate it." (emphasis added)

The Michigan contempt statute has no standards to protect the citizens against wholesale application. You can be found in contempt for shaking your head - no - in a court room when you are sitting in the public sector according to one judge. See also *In re Contempt of Dudzinski*, 257 Mich App 96 (2003) (observer guilty of contempt for wearing shirt with message). *Dudzinski*, however, admits that Free Speech is an important consideration in contempt.

There is no evidence in this case that the contempt here constituted any imminent threat to the administration of justice required by *Eaton v Tulsa*, 415 US 697 (1974) For these reasons this issue should be addressed by the Court. *Nye et al v US*, 313 US 33 (1941) sets forth some of the elements of criminal contempt, which Petitioner contends apply to the states via the Supremacy Clause.

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order was on day of "sentencing." (Trans 1-17-03, p 14) But no written order was entered. Petitioner believes jurisdiction ended on the date of appeal or, alternatively, the date of sentencing. And, furthermore, that the trial court did not have any right or authority to levy attorney fees for the prosecution, even though the Township had a private attorney and claimed that it was civil.

CONCLUSION

This case should be decided because the government, whether local, state or federal, is no ordinary litigant. It has superior powers to harm individuals that no ordinary litigant has. To then bar the right to be heard when challenging the government's case on the merits on appeal is contrary to our long established system of Justice, law and order. The above reasons are ample for review. Petitioner respectfully requests that the Court grant the petition and address these important issues affecting fundamental rights. Should the Court decline to accept the case, he requests the case be remanded to the Michigan Supreme Court with instructions to hear the case and decide the merits.

Respectfully submitted,

_____ January ___, 2006

Michael M. Kennedy
13047 Strotheide Road
Belding, MI 48809

APPENDIX A

Michigan Supreme Court
Lansing, Michigan

ORDER
Entered: May 31, 2005
127410

Clifford W. Taylor,
Chief Justice
Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

GRATTAN TOWNSHIP,	
Plaintiff-Appellee,	SC: 127410
v	COA: 254808
MICHAEL M. KENNEDY	Kent CC: 02-010932
Defendant-Appellant	63rd DC: RO1A0119

On order of the Court, the application for leave to appeal the August 19, 2004, decision of the Court of Appeals is considered, and it is DENIED because we are not persuaded that the questions presented should be reviewed by this Court.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 31, 2005 Clerk /s/ Corbin R. Davis

APPENDIX B

Michigan Supreme Court
Lansing, Michigan

ORDER
Entered: August 30, 2005
127410

Clifford W. Taylor,
Chief Justice
Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

GRATTAN TOWNSHIP,	
Plaintiff-Appellee,	SC: 127410
v	COA: 254808
MICHAEL M. KENNEDY	Kent CC: 02-010932
Defendant-Appellant	63rd DC: RO1A0119

On order of the Court, the motion for reconsideration of this Court's order of May 31, 2005 is considered, and it is DENIED because it does not appear that the order was entered erroneously.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

August 30, 2005 /s/ Corbin R. Davis, Clerk

APPENDIX C

State of Michigan
Court of Appeals

ORDER

Grattan Twp v Michael M. Kennedy
Docket No. 25808
L.C. No. 02-010932-AV

Janet T. Neff
Presiding Judge
Jane E. Markey
Michael R. Smolenski
Judges

The Court orders that the delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.

/s/ Janet Neff, Presiding Judge

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on Date: Aug. 19, 2004

/s/ Sandra Schultz Mengel, Chief Clerk
(seal of the court)

APPENDIX D

State of Michigan
Court of Appeals

ORDER

Grattan Twp v Michael M. Kennedy
Docket No. 25808
L.C. No. 02-010932-AV

Janet T. Neff
Presiding Judge
Jane E. Markey
Michael R. Smolenski
Judges

The Court orders that the motion for reconsideration is DENIED.

/s/ Janet Neff, Presiding Judge

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on Date: Oct. 04, 2004

/s/ Sandra Schultz Mengel, Chief Clerk
(seal of the court)

APPENDIX E

STATE OF MICHIGAN
Court of Appeals
Grand Rapids Office

May 18, 2004

Michael M. Kennedy
13047 Strotheide Road
Belding, MI 48809

Re: Grattan Township v Michael M. Kennedy
Court of Appeals No. 254808
Lower Court No. 02-10932-AV

Dear Mr. Kennedy:

We are herewith returning the reply to answer to application for leave which you filed in the above cause. As there is no provision in the court rules for the filing of such a document, we are unable to accept it for docketing. You may resubmit the filing if it is accompanied with an appropriate motion. If you have any questions about this matter, please feel free to contact this office.

Very truly yours,

Mark Stoddard
District Commissioner
By:/s/ Joyce Conatser
Joyce Conatser

SMS/jc
Enclosure
cc: Ross A. Leisman

APPENDIX F

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

THE PEOPLE OF THE
TOWNSHIP OF GRATTAN,
Appellee,

vs CASE NO. 02-10932-AV

MICHAEL M. KENNEDY,
Appellant.

OPINION AND ORDER

At a session of this Court held on the 31st, day of December, 2003, at the Kent County Courthouse, Grand Rapids, Michigan.

Before the Court is the appellant's appeal of right from the decision and judgment of the Honorable Steven Servaas, Judge of the 61st District Court of September 12, 2002 and the penalties which were imposed upon the appellant-defendant on October 10, 2002.

The dispute between the appellant and the Township of Grattan evolve around the appellant's maintaining in his property within the Township over thirty [p 1] junk automobiles. The proof against the appellant of his violation of Uniform Ordinance No. 1 prohibiting the storage of junk vehicles within the Township limits was overwhelming. The evidence at trial demonstrated that the appellant did not establish a non-conforming use that predated the adoption of Uniform Ordinance No. 1. The evidence that Judge Servaas relied upon was both direct testimony and exhibits which clearly showed that the number of junk cars for which the defendant-appellant was cited for clearly exceeded anything that existed at the time Uniform Ordinance No. 1 was adopted. A review of this question is a question of fact of the trial Court's factual finding in regards to issues such as those presented with

regards to the non-conforming use issue and will not be disturbed on appeal unless the appellate court would have reached different conclusions had it been in the position of the trial court. *Norton Shores v Carr*, 81 Mich App 715 (1978). The record of trial clearly shows that Judge Servaas's conclusion were well supported by the record below.

The defendant-appellant argues that there was a prior nonconforming use that was in existence which should alleviate him of the enforcement provisions of that ordinance. In order to meet that burden, the defendant-appellant must show that there was a substantial non-conforming use prior to the enactment of the ordinance. See *Fruitport Township v Baxter*, 6 Mich App 283, 285 (1967). The [p2] appellant in this case stored thirty junked or inoperable vehicles at his residential property. Uniform Ordinance No. I was adopted in 1973. Aerial photos of the appellant's property from the years 1968, 1973, 1978, 1984, 1989 and 1994 demonstrate that the property was not being used in the way the defendant suggested until, at the earliest, 1978, five full years after the adoption of Uniform Ordinance No. 1. As a result of this there was no legal non-conforming use that was in existence at the time the Ordinance was adopted. As such, the defendant-appellant cannot use this shield from enforcement of the properly enacted ordinance which he was charged with in the District Court.[1] The Court need not address this issue, however, since it is clear from the proofs that the facts did not support the position of the defendant-appellant but rather that of the Township; specifically, that the alleged non-conforming use simply did not exist prior to the enactment of Uniform Ordinance No. 1.

The defendant-appellant next challenges the authority of the Zoning Enforcement Officer to issue the

---

[1] It is significant that there is a body of law that would suggest that the defendant-appellant is not even entitled to raise this defense because this is a regulatory ordinance and as such the non-conforming use defense does not properly lie. See *Natural Aggregates Corporation v Brighton Township*, 213 Mich App 287, 300-301 (1995).

citation. The defendant-appellant argues that that (sic) officer was required to take an oath and with the absence of an oath he could not issue the citation. The Court does not believe that the legal position argued by the defendant-appellant is the correct one. Rather the Court believes that under *People, ex rel Throop v Langdon*, 40 Mich 673 (1879), the ordinance officer did not have to take an oath. Even if he did, the issue was rendered moot by Judge Servaas when the supervisor signed and swore to the citation issued against the appellant prior to the formal hearing in this case. As such any defect that may have existed was cured prior to the trial in this case and, therefore, this assignment of errors is without merit.

The defendant likewise alleges as error the manner in which the Township attorneys were given authority to prosecute civil infractions against the appellant. Under MCL 41.187 attorneys licensed to practice law may be hired by municipalities to carry on their legal responsibilities. The Grattan Township did specifically that in their retention of the Mika, Meyers, Beckett & Jones firm and the attorney Ross Leisman. He was acting within the scope of his office and within the scope of the directions provided to him by the Township and his actions were lawful and consistent with the authority granted to the Township by the Statues of this State. This assignment of error is without merit.

Next, the defendant-appellant argued that the Township Ordinance Enforcer did not have the authority to issue citations. This argument is against the great weight of statutory authority particularly found at MCL 600.8707(a) which defines a local official as "a police officer or other personnel of the County, City, Village, or Township or regional parks and recreation commission . . . legally authorized to issue municipal or civil infractions". In the instant case Mr. Munson, the Zoning Enforcement Officer was authorized by the Township to issue these types of citations which were the subject matter of the trial in this case. He had the authority and was appointed properly by the township board. The chailenges which defendant-

appellant makes to the actions undertaken by Mr. Munson are without merit and unsupported.[2]

The final assignment of error of the appellant is that the trial court Judge failed to disqualify himself after the appellant's untimely motion. The defendant-appellant made an untimely motion for Judge Servaas to recuse himself from the case. While parties are entitled to seek recusal by the Court they must do so in a timely and appropriate fashion in a way that will not prejudice the ability of the parties to seek effective resolution of the case. There was no valid basis for disqualification under MCR 2.003(B) and the appellant's motion, even if there were an appropriate base for disqualification, was untimely under MCR 2.003(C). The untimely and unmerited motion was frivolous and was properly denied by Judge Servaas.

Finally, the argument that the defendant was entitled to a jury trial, is without substance. The controlling statute, MCL 600.8721 provides that formal hearing and municipal civil infractions are to be tried before a Judge of the District Court without a jury. There is no basis for a jury in the case at bar and defendant-appellant's assignment of error suggesting that there is is without support.

WHEREFORE, none of the arguments being put forth by the appellant-defendant in this case having merit, it must be rejected and the Judgment of October 10, 2003 (sic) is upheld. The District Court's decisions in the matter are AFFIRMED.

[Stamped] JAMES ROBERT REDFORD
James Robert Redford, Circuit Judge

---

[2] As is previously noted in the earlier footnote, any possible error that could be ascribed to Mr. Munson was cured by Judge Servaas in the trial when the Township Supervisor adopted the citation prior to the formal hearing.

APPENDIX G

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

MICHAEL KENNEDY
Appellant,

Case No: 02-10932-AV
VS. HON. JAMES ROBERT REDFORD

GRATTAN TOWNSHIP
Appellee.

OPINION AND ORDER

At a session of this Court held on this 15th day of March, 2004, at the Kent County Courthouse, Grand Rapids, Michigan.

On December 31, 2003, on the appellant's appeal of right, this Court upheld the judgment of the Honorable Steven Servaas, Judge of the 61st District Court, of September 12, 2002 and the penalties which were imposed upon the appellant-defendant on October 10, 2002. Now, before the Court is appellant's motion for reconsideration of this Court's judgment.

I.

The dispute between the appellant and the Township of Grattan evolve around the appellant's maintaining in his property within the Township over thirty junk automobiles. The proof against the appellant of his violation of Uniform Ordinance No. 1 prohibiting the storage of junk vehicles within the Township limits was overwhelming. The evidence at trial demonstrated that the appellant did not establish a non-conforming use that predated the adoption of Uniform Ordinance No. 1. The evidence that Judge Servaas relied upon was both direct testimony and exhibits which clearly showed that the number of junk cars for which the defendant-appellant was

cited for clearly exceeded anything that existed at the time Uniform Ordinance No. 1 was adopted. A review of this question is a question of fact of the trial Court's factual finding in regards to issues such as those presented with regards to the nonconforming use issue. "Findings of fact by the trial court may not be set aside unless clearly erroneous. In the application of this principle, regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." MCR 2.613(C). The record of trial clearly shows that Judge Servaas' conclusions were well supported by the record below.

II.

Appellant argues that this Court failed to consider appellant's reply brief and supplemental brief when deciding the appeal by right. Appellant now asks this Court to consider five arguments that were "ripe for decision" found within those briefs.

First appellant argues that the ordinance was repealed prior to his trial and therefore he could not be found responsible under an ordinance that was not in existence. Appellee argues that the repeal was never published and therefore the repeal never became effective.

Michigan law provides: "The ordinance adopting the code, as well as subsequent ordinances *repealing*, amending, continuing, or adding to the code, shall be published as required by law."[emphasis added] MCL 41.186. Similarly, the Michigan Supreme Court has held that ordinance repeals must be published. In *Robert Van Alstine v The People*, 37 Mich 523, 524 (1877), the Court held that an ordinance or by-law shall not have effect until it shall have been published ... and that like notice shall be given of the repeal or amendment of, any ordinance or by-law." Therefore, since Uniform Ordinance No. 1 was never repealed in accordance with the requirements of Michigan law, appellant was properly prosecuted under it.

Secondly, appellant argues that appellee deliberately obstructed justice by denial of Township records before

trial. This issue was previously dealt with when, Judge Soet sanctioned appellee $1,400 for the delay of the discovery requests. Appellant apparently believes that the delays in the discovery requests are cause for dismissal of the case rather than sanctions. However, the documents requested, even if timely disclosed, would not have provided appellant a valid defense of the ordinance violation and the assignment of error is therefore without merit.

Third, appellant argues that he was wrongfully held in contempt of court by Judge Servaas during a hearing on April 18, 2002. This Court finds that appellant was properly found in contempt by Judge Servaas under MCL 600.1701 (a) which states as *follows:*

> Sec. 1701. The supreme court, circuit courts, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:
>
> (a) Disorderly, contemptuous, or insolent behavior, committed during its sitting, in its immediate view and presence, and directly tending to interrupt its proceedings or impair the respect due to its authority.

Appellant was found to be in direct contempt. Contempt committed in the immediate view and presence of the court may be punished summarily by fine, [P3] imprisonment or both. *In re Contempt Of Dudzinski,* 257 Mich App 96 (2003). In light of the behavior and circumstances that transpired on April 18, 2002 in front of Judge Servaas, it is this Courts belief that the Hon. Steven Servaas did not abuse his discretion and in fact, this court believes-that finding appellant in contempt was necessary to return order to the court and protect the integrity of the judiciary. punishment for contempt is appropriate when it is "required to restore order in the courtroom and to ensure respect for the judicial process." *People v Ahumada,* 222 Mich App 612, 618.

Fourth, appellant argues that a sworn complaint was never issued and is required for a valid conviction. However, the Court in *People v Ferency*, 133 Mich App 526, 532 (1984), held "[t]he citation serves as the complaint in a civil infraction action." This is also evident in the Michigan Court Rules. "The citation serves as the complaint in a civil infraction action and may be filed either on paper, or electronically, MCR 4. 101 (A)(b). Therefore, the citation that was signed and sworn to, in the instant case, also served as the sworn complaint.

Moreover, a Michigan Supreme Court decision found that a sworn complaint does not have to be made on personal knowledge but can also be made on information and belief In *People v France*, 370 Mich 156, 160 (1963), the Court held "that when the complaint is regular on its face, showing it to be made on complainant's personal knowledge, it is not subject to impeachment on a showing that it actually was made only on information and belief" Therefore, in the instant case, appellant may not argue that the complaint was invalid because the supervisor signed and swore to it rather than a properly sworn-in zoning enforcement officer with personal knowledge of the violation. [P 4] The supervisor was not required to have had personal knowledge of the violation but only information and belief that the violation occurred.

Appellant's fifth and final argument is that the fines assessed for violation of the ordinance were "excessive, unequal and unjust" On October 10, 2002, Judge Servaas assessed fines and costs totaling $1,000.00 for appellant being in violation of the ordinance on August 29, 2001. Judge Servaas gave appellant one month to conform to the ordinance's zoning requirements and two months to pay the $1,000.00.

The Michigan Constitution prohibits excessive fines. "Excessive bail shall not be required, excessive fines shall not be imposed; cruel or unusual punishment shall not be inflicted; nor shall witnesses be unreasonably detained." MICH CONST art 1 §16 (1908). *People Antolovich*, 207 Mich

714 (1994), set out five considerations to help determine whether a fine is excessive.

> In determining whether a fine authorized by statute is excessive in the constitutional sense, due regard must be had to the object designed to be accomplished, to the importance and magnitude of the public interest sought to be protected, to the circumstances and nature of the act for which it is imposed, to the preventive effect upon the commission of the particular kind of crime, and in some instances, to the ability of accused to pay, although the mere fact that in a particular case accused is unable to pay the fine required to be assessed does not render the statute unconstitutional. [24 CJS, Criminal Law, § 1604, p 203.) *Id.* at 540.

This Court finds that the township does have legitimate public concerns regarding the zoning, safety, and aesthetics of the community for enacting and enforcing Uniform Ordinance No. 1. Additionally, the issue of appellant's inability to pay the fine has never been raised. Therefore, when applying these factors, this Court does not find an excessive fine.

In the instant case, appellant was sentenced on October 10, 2002. On that date, appellant's counsel was well aware that the maximum sentence under the ordinance was $500 in fines and $500 in costs.[3] No objection was made at the time of sentencing as to the excessiveness of the fines and costs.

A person in violation of a township ordinance may be fined $500. "Punishment for the violation of a township ordinance shall not exceed a fine of $500.00, or imprisonment for 90 days, or both, in the discretion of the court.' MCL 42.21.

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[3] Transcript of October 10, 2002 - Sentencing, p. 16 lines 18-24.

Additionally, assigning the appellant to $500 in costs is completely permissible by the Michigan Court Rules. *"In General.* Costs will be allowed to the prevailing party in an action, unless the court directs otherwise, for reasons stated in writing and filed in the action." MCR 2.625(A)(1)

WHEREFORE, none of the arguments being put forth by the appellant-defendant in this case having merit, it must be rejected and the Judgment of October 10, 2003 (sic) is upheld. The District Court's decisions in the matter are AFFIRMED.

[stamped] JAMES ROBERT REDFORD
James Robert Redford, Circuit Judge

APPENDIX H

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

MICHAEL KENNEDY
Plaintiff,

Case No. 02-07286-CZ

v

HON. H. DAVID SOET

GRATTAN TOWNSHIP,
Defendant.

Paul M. Ross (P29944)
Paul M. Ross, P.C.
Attorney for Plaintiff
2840 E. Grand River Ave., Suite I
East Lansing, MI 48823
(517) 337-7677

Ross A. Leisman (P41923)
Ronald M. Redick (P61122)
Mika, Meyers, Beckett & Jones, PLC
Attorneys for Defendant
900 Monroe Ave., N.W.
Grand Rapids, MI 49503
(616) 632-8000

ORDER GRANTING DEFENDANT GRATTAN TOWNSHIP'S MOTION FOR SUMMARY DISPOSITION ON COUNT I OF PLAINTIFF'S COMPLAINT AND ORDERING FINAL RELIEF TO PLAINTIFF ON COUNT II OF HIS COMPLAINT

At a session of said Court held in the Courthouse in the City of Grand Rapids, Michigan, this 6th day of November, 2002.

PRESENT: HON. H. DAVID SOET, Circuit Court Judge

This matter having come before the Court on Defendant Grattan Township's Motion for Summary Disposition, pursuant to the provisions of MCR 2.116(C)(10), and the Court having considered the motion and briefs and other materials submitted in support of said motion, as well as the brief filed in opposition to said motion by Plaintiff Michael Kennedy, as well as oral argument by counsel for the parties at the hearing on September 20, 2002, and the Court being otherwise fully advised of the premises;

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that Grattan Township's Motion for Summary Disposition on Count I of Plaintiff's Complaint is hereby granted pursuant to MCR 2.116(C)(10) for the reasons stated on the record in open court on September 20, 2002.

IT IS FURTHER ORDERED AND ADJUDGED that Grattan Township's Motion for Summary Disposition on Count II of Plaintiffs Complaint is hereby denied.

IT IS FURTHER ORDERED AND ADJUDGED that Plaintiff is granted the following final relief with respect to Count II of his Complaint:

A. Grattan Township shall provide a certification to Plaintiff with respect to all records Grattan Township has provided to Plaintiff in response to his FOIA request through September 20, 2002;

B. Grattan Township shall examine its records to determine if it is in possession of a zoning ordinance dating before the year 1971, and if such zoning ordinance exists, a certified copy of it shall be provided to Plaintiff, and if such zoning ordinance does not exist, the Grattan Township FOIA Coordinator shall provide an affidavit to Plaintiff to that effect;

C. Grattan Township shall examine its records to determine if it is in possession of the Township Board meeting minutes regarding the adoption of Ordinances No. 1 and 7 of 1969, and if such Board meeting minutes exist, a certified copy thereof shall be provided to Plaintiff, and if such Board meeting minutes do not exist, the Grattan

Township FOIA Coordinator shall provide an affidavit to Plaintiff to that effect;

D. Grattan Township shall examine its records to determine if it is in possession of an affidavit of publication of Uniform Ordinance No. 1 of April 10, 1973, and if such affidavit of publication exists, the Grattan Township FOIA Coordinator shall provide a certified copy to Plaintiff, and if such affidavit of publication does not exist, the Grattan Township FOIA Coordinator shall provide an affidavit to Plaintiff to that effect;

E. Grattan Township shall examine its records to determine if it is in possession of the Township Board meeting minutes of June 11 and June 14, 2001, and if such Board meeting minutes exist, the Grattan Township FOIA Coordinator shall provide certified copies to Plaintiff, and if such Board meeting minutes do not exist, the Grattan Township FOIA Coordinator shall provide an Affidavit to Plaintiff to that effect;

F. Grattan Township shall not be required to produce any other documents; and

G. Grattan Township shall pay Plaintiff his reasonable attorney's fees, in the amount of $1,404.00, incurred with respect to the production of the items identified in this Order.

IT IS FURTHER ORDERED AND ADJUDGED that this is a final Order which disposes of the last pending claim and closes the case.

DAVID SOET.[stamped]

HON. H. DAVID SOET, Circuit Court Judge

APPROVED AS TO FORM FOR ENTRY:

/s/ [unreadable]

Paul M. Ross

Attorney for Plaintiff

/s/ R [something]

Ronald M. Redick

Attorney for Defendant (as to form only [hand written])

[Drafted by Grattttan Township - code omitted]

APPENDIX I

STATE OF MICHIGAN
IN THE 63-1 DISTRICT COURT FOR KENT COUNTY

THE PEOPLE OF THE TOWNSHIP OF GRATTAN,
Plaintiff,

v

Case No. RO 1O 119
HON. STEVEN R. SERVAAS

MICHAEL M. KENNEDY,
Defendant.

Ross A. Leisman (P41923)
Ronald M. Redick (P61122)
Mika, Meyers, Beckett & Jones, PLC
Attorneys for Plaintiff Suite One
900 Monroe Ave., N.W.
Grand Rapids, MI 49503
(616) 632-8000

Gregory N. Veltema (P30024)
Attorney for Defendant
2840 East Grand River
East Lansing, MI 48823
(517) 332-2400

ORDER

At a session of said Court held on this 27th day of Sept. 2002, in the 63-1 District Court, Rockford, Michigan.

PRESENT: HON. STEVEN R. SERVAAS
District Judge

THIS MATTER HAVING COME BEFORE the Court for a formal hearing on September 12, 2002, the Court having considered the submissions of the parties, oral argument, and testimony, and the Court being otherwise advised of the premises;

NOW, THEREFORE, IT IS ORDERED AS FOLLOWS:

1. Defendant's Motion to Dismiss due to Zoning Enforcement Officer Munson's Failure To Take An "Oath of Office" Prior To Undertaking His Duties, is denied.

2. Defendant's Motion to Dismiss Due To The Repeal of Ordinance No. 1 is denied.

3. Defendant's oral Motions to Dismiss made at the hearing on September 12, 2002 are denied.

4. Defendant Michael M. Kennedy is hereby found responsible for violating Grattan Township's Ordinance prohibiting the storage of inoperable motor vehicles and junk.

5. The sentencing hearing to decide the appropriate penalty and remedy for Mr. Kennedy's violation is hereby set for October 10, 2002 at 4:00 p.m.

/s/ (stamped)
Hon. Steven R. Servaas
District Judge

Attest: A True Copy
/s/ Jacquelyn Ann D(?)
Deputy Clerk

APPENDIX J

STATE OF MICHIGAN
63-1 JUDICIAL DISTRICT
Court Address
105 MAPLE STREET
ROCKFORD, MI 49341
Court Telephone -.(616) 866-1576

JUDGMENT
Civil Infraction
CASE NO. RO1AO119 ON
( ) Statute (X) Ordinance

Civil Infraction: ORDINANCE VIOLATIONS TRASH, VEHICLES, ETC-CIV. Date: 8-29-01.

People of GRATTAN TWP
V
KENNEDY/ MICHAEL/ M
13047 STROTHEIDE STREET NE
BELDING, MI 48809

Amount of Judgment	
Fine and Costs	$1000.00
State costs	$
Total	$1000.00
Bond forfeited	$
Balance due	$1000.00

WARNING:
Return this notice immediately with your certified check or money order. If you fail to pay, the Secretary of State will take action against your driving privileges. Fines costs, and fees not paid within 56 days of the appearance date or other date owed are subject to a 20% late penalty on the amount owed.

IT IS THE JUDGMENT OF THE COURT THAT:

(x) Other court orders:

PAYMENT DUE: DEC. 10, 2002

ALL VEHICLES IS NOT STREET LEGAL OR LICENSE INSURED OFF PROPERTY BY NOVEMBER 10, 2002, ENFORCEMENT OFFICER TO OK THE PROPERTY ON NOVEMBER 10, 2002.

JUDGMENT IS ENTERED OCT. 10, 2002

S/ [no signature]

Judge STEVEN R. SERVAAS Bar No- P-20230

/s/ Michael Kennedy

CERTIFICATE OF SERVICE

I certify that:

(x) I have personally served a Copy of this judgment on the defendant.

( ) I have served a copy, of this judgment on the defendant by ordinary mail addressed to the address shown on the judgment. Unless other wise indicated.

/Deputy Court Clerk /s/ J. Don???????????

NOTICE TO DEFENDANT You may have a right to appeal this judgment in 7 days. If this is a default (balance not legible)

APPENDIX K

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

MICHAEL KENNEDY,
Plaintiff,

v

Case No. 02-07286-CZ
HON. H. DAVID SOET

GRATTAN TOWNSHIP,
Defendant.

Paul M. Ross (P29944)
Paul M. Ross, P.C.
Attorney for Plaintiff
2840 E. Grand River Ave., Suite I
East Lansing, MI 48823
(517) 337-7677

Ronald M. Redick (P61122)
Ross A. Leisman (P41923)
Mika, Meyers, Beckett & Jones, PLC
Attorneys for Defendant
900 Monroe Ave., N. W.
Grand Rapids, MI 49503)
(616) 632-8000

AFFIDAVIT OF LANA F. GREEN

I, Lana F. Green, being duly sworn, state as follows:

1. I am the Township Clerk of the Township of Grattan and serve as the Township's FOIA Coordinator.

2. Pursuant to the order of the Court in the above-captioned action, I have completed a diligent search of the records, reports, statements, minutes and data compilations, in any form, that have been made or preserved by the Township to determine whether the Township is in possession of any of the following documents:

(a) A zoning ordinance dating before the year 1971.

(b) Township Board meeting minutes regarding the adoption of Ordinances No. 5 and 7 of 1969.

(c) An affidavit of publication of Uniform Ordinance No. 1 of April 10, 1973.

(d) Township Board meeting minutes of June 11 and June 14, 2001.

3. My diligent search indicated that the Township is not in Possession of the following documents:

(a) A zoning ordinance dating before the year 1971.

(b) Township Board meeting minutes regarding the adoption of Ordinances No. 5 and 7 of 1969.

(c) An affidavit of publication of Uniform Ordinance No. 1 of April 10, 1973.

4. My diligent search further indicated that there was no Township Board meeting conducted on June 14, 2001 and therefore, that there are no minutes for such a meeting

5. My diligent search did indicate that Township Board meetings were conducted on June 4 and June 11, 2001. The minutes of these meetings are attached at Tab A of this affidavit.

6. Minutes attached at Tab A of this affidavit are true and accurate copies of such minutes as kept in the Township Hall and are hereby certified as such.

7. The records provided to Plaintiffs attorney by the Township through September 20, 2002, in response to his FOIA request dated May 14, 2002, are true and accurate copies of such records as kept in the Township Hall and are hereby certified as such.

8. Plaintiff has alleged in this action that he has not received copies of the Grattan Township Zoning Ordinances adopted in 1977 and 1987. Although the Township maintains that it did provide copies of these documents to Plaintiffs attorney in response to his May 14, 2002 FOIA request, additional copies of these documents are attached at Tab B of this affidavit.

9. The zoning ordinances attached at Tab B of this affidavit are true and accurate copies of such zoning ordinances as kept in the Township Hall and are hereby certified as such.

Dated: October 7, 2002 /s/ Lana F. Green
Lana F. Green

STATE OF MICHIGAN
COUNTY OF KENT

The foregoing instrument was acknowledged before me this 7th day of October, 2002, by Lana F. Green

MICHELE M. KRICK, Notary Publicc
Montcalm County, Michigan
"Acting in Ionia County,"
My Commission Expires February 14, 2005

APPENDIX L

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

December 16, 2005

Re:
Michael M. Kennedy
v Grattan Township
Application No. 05A549

Dear Mr. Kennedy:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Stevens, who on December 16, 2005, extended the time to and including January 27, 2006.

This letter has been sent to those designated on the attached notification list.

Sincerely,

WILLIAM K. SUTER, Clerk

by /s/ Gail Johnson, Case Analyst

(1)

No. 05-953

In The
SUPREME COURT OF THE UNITED STATES

MICHAEL M. KENNEDY,
Petitioner

v

GRATTAN TOWNSHIP, MICHIGAN
Respondent

Petition For A Writ Of Certiorari
To The Michigan Supreme Court

PETITION FOR WRIT OF CERTIORARI REPLY

By:
Michael M. Kennedy,
13047 Strotheide Rd,
Belding, MI. 48809
(616) 691-7122

March, 2006

QUESTIONS

1. Whether the US Constitution and common law protects pro se appellant from erroneous state appellate court summary decision stating "application for leave to appeal is DENIED for *lack of merit* (emphasis added) in the grounds presented" where the clerk refused to file reply brief, no briefing or oral arguments were made on the merits and no fact or authority was cited [in the decision of the appellate court] and only 21 days were allowed to appeal? And, if not, what standards must state appellants by leave meet to gain acceptance and a full, fair, just decision on the merits?

2. Does it violate the intent of *Brady v Maryland* for state subdivisions to withhold information regarding the ordinance not being properly enacted and/or repealed prior to trial resulting in an unjust conviction?

3. Whether judicial bias is evident from the record where the trial judge refused to allow motion to dismiss based on lack of oath and repeal of the ordinance to be fully, fairly or justly heard before trial and other acts?

4. Whether Michigan contempt statute is unconstitutional on its face and/or as applied to Petitioner while representing himself and speaking in his own defense, as is his privilege under the 1st and 14th Amendments and state constitution?

Note: 28 USC sec 2403(b) may apply. Rule 29(4)(c)

TABLE OF CONTENTS

Petitioner assumes that even though Respondents did not file a response to the petition he may still clarify his questions, summarize facts and make concluding arguments urging acceptance.

I. QUESTION CLARIFICATION

Petitioner would like to clarify question 1. A few clarifying words were inadvertently omitted while attempting to make the question concise. They are supplied in brackets here. (See p i.) Petitioner *did* cite facts and authorities in requesting leave to appeal. The Michigan Court of Appeals *did not* in its decision. (See Pet. App. C, p 3)

II. THE QUESTIONS ARE IMPORTANT

The issues in this case are basic and directly affect fundamental rights of many people. Petitioner was unjustly convicted of a zoning ordinance violation, without a jury trial, for Constitutionally protected uses of his private property, which he has been unable to get reversed in 3 subsequent state appeals, 2 of which did not grant leave. Furthermore, he was jailed allegedly for contempt for speaking and representing himself as best he could under the circumstances before trial. The alleged contempt is undefined. He believes the facts are clear and undisputed.

First, it is undisputed that all the questions were raised below and the record is complete enough to provide competent review. Second, all appeals were timely. The appeal to the Michigan Court of Appeals (MCA) was timely - within the meager 21 days allowed. It was not a "delayed" leave to appeal, as the MCA erroneously stated. (Pet. App. C, p 3)

A. What constitutes a decision on the merits?

It seems clear that MCA did not have jurisdiction, since it did not accept the case. Plus, there is no standard whatsoever to meet to qualify for appeal by leave at the MCA. Therefore, every denial of leave is purely arbitrary and capricious and certainly is not fair or just to pro se

appellants.[1] For certain at the MCA Petitioner was *not* "given a meaningful opportunity to present [his] case." ***Matthews v Eldridge***, 424 US 319, 349 (1976)

> "[Michigan is] free to regulate the procedure of its courts in accordance with its own conception of policy and fairness *unless in so doing it offends some principle of justice* so rooted in the traditions and conscience of our people as to be ranked as fundamental. *Twining v New Jersey*, 211 US 78, 106, 111, 112; *Rogers v Peck*, 199 US 425, 434; *Maxwell v Dow*, 176 US 581, 604; *Hurtado v California*, 110 US 516; *Frank v Mangum*, 237 US 309, 326; *Powell v Alabama*, 287 US 45, 67." *Snyder v Massachusetts*, 291 US 97, 105 (1934) (emphasis added).

Ruling on the merits without accepting the case, briefing, oral arguments and giving reasons based in law and fact would seem to violate long established practices. So also does refusing to accept the case on appeal at the Michigan Supreme Court when fundamental rights are clearly presented - the Supremacy Clause and 14th Am.

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[1] In contrast, consider the restrictive and preferential standards of the Michigan Supreme Court (MSC). Note first that at the MSC judges and lawyers disciplined for *misconduct and ethical violations* have clearly defined rights of access to that court without going to the Court of Appeals at all. (See Pet. p 13, (1)(3) and p 14 (4). Note also that if the suit is "by or against" the state or one of its agencies or subdivisions or an "officer" thereof, it must have "significant public interest." (Pet. p 13 (2)) How does one of thousands of convicted pro se defendant-appellants climb that sheer cliff? In opposition to leave to appeal to the Michigan Supreme Court, the Respondent simply and briefly argued - falsely - that the application did not raise any "significant" issue. The Court may decide that issue by observing the questions raised at the MSC. (See Pet. p 10-12) Apparently federal Constitutional rights issues are not "significant" when raised by pro se appellants. But that was supposed to be the primary purpose of the Bill of Rights and, before that, the Declaration of Independence - limited government.

Note that not one of the requirements at the Michigan Supreme Court mentions protecting constitutional or fundamental rights *of the citizens* for whom constitutions were initially intended to protect. Petitioner's rights were simply ignored.

The question of what constitutes a decision on the merits and how it is made concerns federal cases also. In *Elsman v Standard Federal Bank*, (unpub. 00-2293/01-1544, 6th Cir 2002) the 6th Circuit was at a loss to figure out what the reasoning of the district court was in dismissing part of the case regarding Personal Property. (at 14) The district court only made a "simple assertion that '"for the reasons that . . the defense has briefed and argued here, this Court is constrained to grant the motion to dismiss,'". The 6th Circuit said generously this "muddles the issue." It found the district court "erroneously dismissed those claims based on res judicata." (at 19) And later it stated: "Even though the district court did not employ the correct legal principle in dismissing Elsman's claims . ." (at 20)

While reviewing the sanctions awarded against the pro se plaintiff - Elsman, the 6th Cir. noted that the court did not make a proper review or announcement of its findings. (p 21-26) It concluded that the district court failed to comply with the requirements of Rule 11(c)(3) when it imposed Rule 11 sanctions when it simply '"adopted' . . . `the reasons that the defense here has briefed and argued,' rather than making its own findings of fact and conclusions of law, and therefore abused its discretion." (at 26) Elsman was lucky to get a reversal on some points on his appeal by right. But Petitioner has not been so lucky in his *three* state appeals. One should have been sufficient to reverse.

B. Do pro se appellants have equal rights in judicial proceedings?

There is an Equal Protection issue in the Michigan Court of Appeals decision and elsewhere. Petitioner was pro se. He doubts very much if any appeal brought by an attorney would have been ruled without merit under the same conditions and with the same lack of Due Process. Plus, this practice may have been applied to other pro se appellants, but there is no way to know, since the cases are unpublished. If such were the case, it would demonstrate a clear Equal Protection violation against this class of appellants. Petitioner is not aware of any decision

specifically defending the Equal Rights of citizens representing themselves. Thus, the issue has national importance.

In *Gilbert v Daimler Chrysler Corp.*, 470 Mich 749, 754; 685 NW 2d 391 (2004) (at fn 1) it was stated:

> "The people have declared in our [state] Constitution that "equal protection of laws" shall not be denied on the basis of national origin. Const. 1963, art 1, sec 2.[2] See, also, the Michigan Civil Rights Act, MCL 37.2101 et seq. *The observation of this fundamental principle cannot stop at the door of the courthouse. Indeed, it is within the courthouse that we ought to be most concerned that the merits of a party's cause, not its* alienage or *status, should remain the exclusive focus* of a jury's deliberations." (emphasis added)

Does Justice and Equal Protection of the Law stop at the state courthouse doors for pro se appellants? Do they have any right to challenge state government actions? See *Howard v Whitbeck*, et al, 382 F.3d 633 (2004 6th Cir) (Pro se civil rights case against chief judges of Michigan Court of Appeals and Michigan Supreme Court. Held denied access.)

C. Does *BRADY v MARYLAND* apply to the present case?

The important question of whether *Brady v Maryland*, 373 US 83 (1963) was violated by the Township's deliberate withholding of exculpatory evidence prior to trial that its ordinance had not been properly enacted is ripe for review.

Brady is important case law to the wrongfully convicted, as here. *Brady* issues have recently been exposed in the alleged terrorist trials in federal court in Detroit. There, after conviction and on motion for a new trial, the Justice Department admitted withholding substantial

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[2] *"No person shall be denied the equal protection of the laws;* nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color, or national origin. The legislature shall implement this section by appropriate legislation." (emphasis added)

amounts of exculpatory evidence. In fact they submitted a 60 page filing agreeing not to oppose a new trial and revealing the extent of the evidence withheld - some 2000 pages. (*US v Koubriti*, et al, 01-80778 E.D. Mich) Apparently *Brady* violations are common.

D. Where is the line between Free Speech in court and contempt?

Petitioner was jailed for contempt for representing himself as best he could. He was exercising his First Amendment right of Free Speech in a court in a responsible fashion as a defendant. When or did he cross the line to jailable contempt of court (whether criminal or civil) and, if so, what due process is available at that point?

E. Is a state judge who refused to allow a motion to dismiss biased in favor of the government?

Petitioner believes the state district court had no jurisdiction or authority to proceed in this case without a properly enacted ordinance. Secondly, when the ordinance was repealed before trial, the court lost jurisdiction and authority to proceed, but did so anyway. In fact, it disregarded a valid and timely motion to dismiss presented by Petitioner's attorney in order to convict Petitioner.[3]

CONCLUSION

Petitioner respectfully requests this Court decide these important Constitutional questions.

Respectfully submitted,

_____ March ___, 2006

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[3] It later signed an order drafted by Respondent's attorney contending the motion was denied. (See Pet. p 19, fn 8 and App I, App p 19-20, ¶¶(1)(2)&(3))